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U.S. - CHINA EXPORT CONTROL ISSUES

Issue

The Administration has recently implemented export control liberalizations that increase Chinese access to U.S. high technology. The Secretary should discuss in private meetings the further benefits to China of engaging in a serious dialogue with the U.S. on export controls, especially in the nonproliferation arena. Commerce can actively assist the Chinese through technical consultations on effective export control procedures, and outreach seminars to U.S. companies in China and Chinese importers regarding export control requirements.

Background

Since Tiananmen Square (1989), the U.S. has maintained a policy of denial for U.S. exports to police and military entities in China. Legislative sanctions that restrict exports to China of nuclear-related items and satellites are still in effect. Moreover, last August the U.S. sanctioned China for transfers of related goods, causing difficulties for U.S. satellite manufacturers (a list of sanctioned Chinese entities is attached). If additional intelligence concerning missile transfers becomes available, more sweeping sanctions on exports of U.S.-controlled goods, as well as Chinese imports, will be imposed.

Liberalizations. As part of the TPCC, controls on computers were significantly liberalized (from 12.5 to 260 MTOPS), thereby freeing up most lower-level computers, including many Silicon Graphic, Sun, Hewlett Packard, DEC and IBM workstations from U.S.G. approval. Moreover, coincident with COCOM's cessation on March 31, 1994, the U.S. implemented additional liberalization of computers and virtually all telecommunications products through a new general license - GLX. GLX (applicable to former Soviet Bloc countries and China) permits shipments to civil end-users without prior written Commerce authorization.

This liberalization affects a wide range of computer, telecommunications and other equipment. U.S. exporters may now freely ship computers up to 1000 MTOPS, and export telecommunications equipment such as fiber optic, radio relay, cellular communications systems, and related advanced switching equipment. This will help U.S. companies to be competitive in the large Chinese telecommunications market (estimated to be \$10-17 billion in the next 7-10 years.)

(FOUO) Also noteworthy is the recent shipment of the first Cray computer to the Chinese Meteorological Service (CMA). A second Cray computer, also below the supercomputer threshold, is slated for September; a license application for an upgrade of the Cray to supercomputer status is expected shortly. (FOUO)

Energy Related Equipment. U.S. companies currently face no restrictions in exporting coal, oil and gas exploration, development and production equipment to China. Commerce recently removed U.S. unilateral controls on exports of certain nuclear-related goods associated with electric power production. These controls had restricted U.S. supply of

reactor and power plant simulators, process control systems and turbines-generators. The new rule allows American companies such as Westinghouse to compete more freely in this so-called "balance of plant" market niche. Industry estimates this market to be worth \$10-15 billion over the next ten years; Commerce estimates that China will invest as much as \$65 billion in the energy sector by 2000.

Export Control Dialogue. Your visit provides the opportunity to discuss with the Chinese the mutual benefit of engaging in a dialogue with the U.S. on export controls and nonproliferation issues. The end of COCOM, and ongoing negotiations to establish a successor regime aimed at countries of proliferation concern (Iran, Iraq, Libya, North Korea), provide an incentive for the Chinese to join like-minded countries on a nondiscriminatory basis to deal with nonproliferation. The fact that the U.S. is actively pursuing Russian membership in the successor regime is important to the Chinese. However, Chinese sales of proliferation-related items remain problematic (FYI, a short, classified background paper concerning Chinese actions with regard to each nonproliferation regime is available from Don Forest.) Chinese membership in the post-COCOM regime will depend on their adherence to nonproliferation regimes and norms, restraint in arms sales, and implementation of an effective export control system.

There are recent indications that the Chinese may be prepared to engage in export control discussions. Your raising the issue in the positive—that is, referencing the benefits of future liberalizations and increased access to U.S. technology—could focus high-level attention on the issue and help facilitate a serious dialogue. Such liberalizations could include allowing U.S. exporters to use a distribution license (i.e. a license that allows multiple shipments) for exports to China, and easier access to higher levels of U.S. computers and related equipment.

In addition to providing technical assistance to Chinese government officials to help establish an effective export control regime (i.e., creating adequate legal, administrative and enforcement mechanisms), Commerce can hold seminars to assist U.S. companies in China and Chinese importers in understanding and complying with export control laws and procedures. Educated Chinese importers, for example, will be better able to provide support documentation needed by U.S. exporters, thereby assuring more complete information on end-use and expeditious license review. If appropriate, you could offer or announce the first in a series of export control seminars being planned for late 1994/early 1995 in China.

U.S. - CHINA EXPORT CONTROL ISSUES

Talking Points

- The U.S. has recently liberalized export controls in ways that will increase significantly the opportunities for U.S.-China trade.
- This is especially apparent in the computer area, where our new general license GLX (adopted April 4, 1994) allows computers up to 1000 MTOPS and almost all telecommunications equipment to be shipped to civil end-users in China without any prior U.S.G. approval.
- A prime example of this liberalized policy is the recent shipment of a powerful computer that has been installed in the National Meteorological Center, here in Beijing.
- We also have recently removed restrictions on the export of such items as reactor and power plant simulators, process control systems and turbines-generators for use in civilian nuclear power plants.
- I believe these actions on the U.S.'s part demonstrates a desire to begin a fruitful dialogue on various export control issues that will allow, in the future, for further such liberalizations. Such cooperation, especially in controlling goods of nonproliferation concern, is of mutual benefit.
- As you know, COCOM has ended, and efforts are underway to develop a new regime that will address the control of conventional arms and sensitive dual use technology. Membership in the new regime is non-discriminatory—that is, open to all like-minded nations who adhere to appropriate nonproliferation norms (AG, MTCR, NSG), exercise restraint and transparency in conventional arms transfers, and have effective export controls.
- We would very much like to discuss our experiences in developing an effective export control system. Our specialists could begin this process immediately.
- In addition, we propose a separate initiative involving a series of seminars in China for both U.S. companies and Chinese importers. The seminars would facilitate greater understanding by the business community and help expedite the processing of U.S. export licenses for Chinese end-users. The seminars could begin in late 1994.
- I look forward to continuing to discuss export control and nonproliferation issues—matters of mutual importance and benefit—in our future meetings.

END-USE CHECKS IN CHINA

Issue

Assistant Secretary for Export Enforcement (AS/EE) John Despres has proposed to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) Director for Science and Technology Liu Hu that they reach an agreement on the text of an "end-use check arrangement" before you visit China. This arrangement will permit the United States to conduct more pre-license checks with less delay and, for the first time, permit the U.S. to conduct post-shipment checks in China. Information obtained from these end-use checks would facilitate the licensing of more dual-use exports to China.

In your discussions with Minister Wu Yi, you should be prepared to raise the end-use arrangement, and, depending on its status at the time, to urge that it be agreed to, signed, and implemented soon. When it is fully agreed to, AS/EE Despres plans to sign the arrangement with Director Liu Hu in Beijing, without publicity, and to put it into effect immediately.

Background

The United States performs end-use checks worldwide on sensitive dual-use exports to determine the reliability of the stated end-use and end-user. U.S. dual-use exports to China are constrained by current arrangements which limit U.S. end-use checks in China.

The U.S. began conducting pre-license checks (PLCs) in China in the early 1990s. Checks have been carried out intermittently since then by FCS personnel in Beijing, subject to the approval and supervision of MOFTEC. However, MOFTEC approves only a limited number of the U.S.'s PLC requests, delays many of them, and has not permitted post-shipment verifications (PSVs).

Because of these limitations, the U.S. proposed formalizing an end-use check arrangement during former Secretary of Commerce Franklin's trip to China in December 1992. Former Minister of Foreign Economic Relations and Trade (MOFERT) Li Lanqing agreed to negotiate such an arrangement and in the following months, DOC and MOFTEC, MOFERT's successor, exchanged draft proposals.

There were no meetings to discuss these proposals until AS Despres invited Director General Liu Hu to Washington in January 1994. While in Washington, Liu held detailed discussions with Despres and other U.S. officials. Despres and Liu talked again at the U.S.-China Joint Committee on Commerce and Trade meeting in April, and during Despres's visit to China in mid-July, where they exchanged new proposals which both acknowledge Chinese sovereignty and permit the U.S. to check on the terms of license applications and conditions. Yet another revised US proposal, that responds to the latest Chinese proposal, was sent August 18.

END-USE CHECKS IN CHINA
Talking Points

- Our cooperation in controlling dual-use technology is important for US-PRC commercial relations.
- I am pleased by the progress that has been made toward more cooperative arrangements for end-use checks on dual-use exports from the United States to China.
- Full agreement and implementation of new arrangements for end-use checks will help improve China's access to more advanced computers and other high technology dual-use exports from the United States.
- It will also help strengthen cooperation between the United States and China on export controls.

3) Linkage between licenses and Chinese pricing of launch services (Hollings amendment): The Hollings amendment to the Senate Commerce Appropriations bill was recently dropped in Conference, but would have withheld export licenses for launches of U.S.-origin satellites for China and Russia unless they are in full compliance with fair pricing under a bilateral agreement and adhering to MTCR guidelines. The Helms amendment, which proposed behavioral criteria for licensing approval, was also dropped in conference. These issues are likely to be raised again in other legislation, possibly the EAA.

SATELLITE EXPORTS TO CHINA

Talking Points

- The U.S. is the world leader in state-of-the-art communications satellites and remains a very competitive and reliable supplier internationally. We look forward to developing further our trade in this promising Chinese market.

MTCR sanctions on satellites

- (FOUO) Satellites under Commerce jurisdiction are not covered by the current MTCR sanctions. Therefore, we were able to approve three recent satellite exports for Chinese launches (the AsiaSat 2, APStar 2, and Optus B-3 satellites.) (FOUO)
- (FOUO) I am pleased to note that Commerce also recently received a Presidential waiver for Martin Marietta's EchoStar satellites to be launched from China. The export licenses were approved in early August. U.S. satellite companies remain world leaders, and reliable suppliers of communications satellites. (FOUO)
- With regard to the missile sanctions, we are hopeful that your government will resume discussions on resolving the MTCR sanctions at the earliest possible date.

Hollings or Torricelli Amendments

- The Clinton Administration does not support the Hollings amendment or other similar amendments as the appropriate way to achieve the goals of fair pricing for launch services or nonproliferation. I personally wrote a letter opposing the amendment. We believe discussing these issue in other fora are the best ways to resolve such problems.

NUCLEAR EXPORTS TO CHINA

Issue

Sanctions imposed as a result of Tiananmen Square prohibit U.S. industry from competing in the multi-billion dollar market to provide nuclear power to China.

Background

To satisfy both economic and ecologic needs, the People's Republic of China (PRC) is embarking on plans to greatly expand its nuclear energy production capability. They have concluded that developing nuclear energy will be the best way to eliminate shortages in electric power supply in such fast developing areas as the coastal southeast. Preparations are currently under way with regard to siting and financing of nuclear power plants in Fujian, Jiangsu, Shandong and Hainan provinces. U.S. industry is precluded from participating in this development due to the export control restrictions imposed as a result of the Tiananmen Square incident.

The Commerce Department estimates that the PRC will invest as much as \$65 billion in its entire energy sector (nuclear, coal, and oil and gas power generation) by the year 2000, with a \$10-15 billion investment over the next ten years. Industry estimates the nuclear energy market sales potential to be \$16 billion.

Export Limitations. Sanctions imposed as a result of the Tiananmen Square massacre (Public Law 101-246, Section 902 A 6 of Title IX of the Foreign Relations Authorization Act, FY 90-91) prohibit U.S. support in this area. While the majority of exports that would support the development of nuclear power in the PRC fall under the jurisdiction of the Nuclear Regulatory Commission (e.g. the reactors), items controlled by Commerce for nuclear nonproliferation reasons are currently prohibited from export for use in "production" or "utilization" facilities in the PRC. These items include computers, power plant simulators, and some process control systems.

Recent Liberalizations. However, on a brighter note, recent regulatory changes have occurred that support the export of "balance of plant" equipment (i.e. energy production equipment such as turbines and generators). Balance of plant equipment is not controlled by the Nuclear Suppliers Group (NSG). To more closely conform to the NSG guidelines, balance of plant equipment was moved on March 9, 1994 to a category of items not controlled to the PRC. As a result, the Tiananmen sanctions are no longer applicable, and U.S. industry is now able to compete in this billion dollar secondary market.

In addition, Commerce recently granted a license for equipment to be exported to the Chinese Institute of Atomic Energy. The equipment will be used in developing International Atomic Energy Agency (IAEA) safeguards against misuse or diversion of nuclear materials. The Department of Energy has been working with the Chinese to assist them in establishing a nuclear safeguards program.

NUCLEAR EXPORTS TO CHINA

Talking Points

(If raised)

- As you know, the United States leads the world in nuclear technology. The latest generation nuclear power plants contain significant advances including vastly simplified designs and incorporation of major passive safety features.
- However, U.S. law currently prohibits our industry from providing major support to the Chinese nuclear power industry. We would like to participate in this expanding market, but we must insure that nonproliferation norms are adhered to.
- U.S. policy overall does not allow for such support to countries that do not adopt full scope nuclear safeguards.
- In time, a dialogue and greater understanding of our common nonproliferation goals and export policies as we have proposed can help lead to a situation in which trade in this sector can be increased.

(If asked about potential nuclear transfers to North Korea)

- [Talking points will be provided upon arrival in Beijing, if unable to obtain prior to the Secretary's departure.]

PROPOSAL FOR EXPORT CONTROL DISCUSSIONS

The United States proposes that a delegation, composed of representatives from the Department of State, the Department of Commerce, the Department of Defense, the Department of Energy, and the Arms Control and Disarmament Agency, visit China this autumn for the specific purpose of meeting with appropriate Chinese officials for preliminary discussions on export policies and controls. The United States proposes meeting with, for example, representatives from the Ministry of Foreign Affairs, the Ministry of Foreign Trade and Economic Cooperation, the Commission on Science and Technology, and Industry for National Defense (COSTIND), the National Arms Trade Control Administration, and the National Administrative Committee for Arms Trade.

The purpose of the proposed meetings would be to share information and expertise on our respective export control systems and policymaking mechanisms, to identify issues where further discussions would be fruitful, and to discuss the feasibility of establishing technical working groups for further discussions.

The agenda for the proposed autumn meeting would be exploratory in nature and broad in scope:

U.S.:

I. Multilateral Controls

- o Overview of key non-proliferation multilateral norms and regimes
- o Implementation of those regimes in U.S. licensing and enforcement - how the system works

II. National Controls

o Dual-use Exports

- Overview of U.S. law, regulations, export licensing system, agency roles, interagency coordination and conflict resolution

o Arms Exports

- Arms Transfer Policy: U.S. decision-making process and criteria
- Arms Export Controls: Overview of U.S. law, regulations, munitions licensing system, agency roles

China:

I. Non-proliferation Controls and Policy-making

II. Dual-Use Exports

- o Overview of Chinese law, regulations, export licensing system, agencies involved, policy-making process, interagency coordination and conflict resolution

III. Arms Exports

- o Policymaking process in China: Key players, interagency coordination and discussion, criteria for decision-making
- o Arms Export Procedures: Laws, regulations, administrative process

PRESENTATION OF U.S. PROPOSAL ON
EXPORT CONTROL DISCUSSIONS

TALKING POINTS

- o During the last Joint Commission on Commerce and Trade (JCCT) meeting in Washington, representatives from your government expressed an interest in conducting a dialogue with the United States concerning our experience in developing an export control regime.
- o Our two countries have a shared interest in setting an example for the rest of the world through responsible practice in export controls. We welcome China's interest in working with us to advance export controls.
- o Discussions could begin as soon as this fall. Ultimately, we would hope one result of such discussions would be additional U.S. licensing liberalizations, similar to the recently implemented general license GLX, which permits a wide range of computers and telecommunications equipment to be exported to civilian end users in China.
- o It is with this in mind that we offer the following proposal: